

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
CIVIL ACTION NO: 1:12-cv-00169

**Mary's House, Inc., Jane Doe 1, Jane Doe 2,
Jane Doe 3, Jane Doe 4, Jane Doe 5,
Jane Doe 6, Jane Doe 7, and Jane Doe 8,**

Plaintiffs,

v.

**STATE OF NORTH CAROLINA; NORTH
CAROLINA DEPARTMENT OF HEALTH
AND HUMAN SERVICES; NORTH
CAROLINA DIVISION OF AGING AND
ADULT SERVICES; NORTH CAROLINA
OFFICE OF ECONOMIC OPPORTUNITY;
BEVERLY PERDUE, Governor of the State of
North Carolina (in her official capacity);
ALBERT DELIA, Acting Secretary, North
Carolina Department of Health and Human
Services (in his official capacity); DENNIS
STREETS, Director, North Carolina Division of
Aging and Adult Services (in his official
capacity); MARTHA ARE, Homeless Policy
Specialist, North Carolina Division of Aging
and Adult Services (in her official capacity);
VERNA BEST, Director, Office of Economic
Opportunity (in her official capacity); and
MICHAEL LEACH, Homeless Programs
Coordinator, Adult Services Section, North
Carolina Division of Aging and Adult Services
(in his official capacity),**

Defendants.

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the “Agreement”) is hereby made and entered into by and among all Plaintiffs and all Defendants in this civil action. The Plaintiffs and Defendants are collectively referred to as the “Parties.”

RECITALS

WHEREAS, on February 17, 2012, Mary’s House, Inc. and eight Jane Doe plaintiffs (current or former residents of the Mary’s House facility) filed a Complaint in the United States District Court for the Middle District of North Carolina against the State of North Carolina, the North Carolina Department of Health and Human Services, the North Carolina Division of Aging and Adult Services, the North Carolina Office of Economic Opportunity, and several state officials (in their official capacities) alleging that the state’s decision to deny them access to federal Emergency Shelter Grant funds violated their rights under federal fair housing and antidiscrimination laws and the United States Constitution (the “Federal Action”);

WHEREAS, pursuant to the MEMORANDUM OPINION AND ORDER entered by United States District Judge Thomas D. Schroeder on September 30, 2013, the Federal District Court dismissed certain of Plaintiffs’ claims alleged in the Federal Action, but other claims were not dismissed;

WHEREAS, before filing the Federal Action, Mary’s House, Inc. (“Mary’s House”) and certain other petitioners filed or intervened in two contested cases against the North Carolina Department of Health and Human Services (the “Department”) and certain other state agencies and officials in the North Carolina Office of Administrative Hearings, case numbers 10 DHR 5999 and 11 DHR 9479, in which Mary’s House and other petitioners alleged the decisions of the Department and the other respondents to disqualify Mary’s House from applying for federal

Emergency Shelter Grant funds for the 2010-11 and 2011-12 fiscal years were arbitrary, invalid, and contrary to North Carolina law (the “State Actions”);

WHEREAS, pursuant to an Order to Stay dated March 26, 2012, the Administrative Law Judge ordered that the two State Actions (10 DHR 5999 and 11 DHR 9479) are stayed pending final resolution of the Federal Action;

WHEREAS, on July 25, 2011, Mary’s House and some of the petitioners in the State Actions filed an administrative complaint with the U.S. Department of Housing and Urban Development (“HUD”) against the State of North Carolina and the then-Secretary of the Department, HUD Case No. 04-12-0522-8, alleging that the Department’s decisions to deny federal Emergency Shelter Grant funds to Mary’s House in 2010 and 2011 violated their rights and constituted illegal discrimination under federal fair housing laws (the “Administrative Action”);

WHEREAS, the Administrative Action has been assigned to a HUD Equal Opportunity Specialist who is investigating the claims asserted in the Administrative Action;

WHEREAS, the Federal Action, the State Actions, and the Administrative Action all remain pending; and

WHEREAS, the Parties now desire to resolve Federal Action, the State Actions, and the Administrative Action without further litigation.

NOW, THEREFORE, in consideration of the representations, promises, and other valuable consideration in this Agreement, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. **Settlement Payment**. Defendants shall pay to Plaintiff Mary’s House, Inc. only the sum of seventy-two thousand five hundred dollars and zero cents (\$72,500.00) (the

“Settlement Amount”). The Settlement Amount shall be made in a lump sum payment delivered no later than August 1, 2014. The payment shall be made by check payable to “Brooks, Pierce, McLendon, Humphrey & Leonard, LLP,” which shall be delivered to the following address:

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
c/o Kyle Woosley
230 North Elm Street, Suite 2000
Greensboro, NC 27401

2. Review of Existing Rules in the Administrative Code.

(a) Pursuant to Section 150B-21.3A of the North Carolina General Statutes and Title 26 North Carolina Administrative Code (“NCAC”), Chapter 5, Sections .0200 *et seq.*, the Department is undertaking review of its existing rules in 10A NCAC Chapter 97 to determine whether each such rule is necessary with substantive public interest, necessary without substantive public interest, or unnecessary. The Department agrees that, pursuant to its obligations under N.C.G.S. § 150B-21.3A or its obligations under N.C.G.S. § 150B-19.1(b) to review and repeal rules that are unnecessary, unduly burdensome, or inconsistent with subsection N.C.G.S. § 150B-19.1(a), it will review and assess its existing rules in Subchapter 97F of Title 10A of the North Carolina Administrative Code, and it will seek in good faith the repeal or deletion of Rule 10A NCAC 97F .0102(7) from the North Carolina Administrative Code.

(b) The Department further agrees it will keep the Director of Mary’s House informed by email of its progress on the review of existing rules regarding the Emergency Shelter Grant Program and the drafting of new rules governing the Emergency Solutions Grant Program. The Department shall provide progress updates to the email address at maryhousegso@aol.com or at such other email address as Mary’s House subsequently provides to the Department’s Emergency Solutions Grant Program staff.

3. **Dismissals.** Within 14 days following Plaintiffs' receipt of the Settlement Amount in accordance with Paragraph 1, all Plaintiffs agree to: (a) file a voluntary dismissal with prejudice of all claims in Civil Action No. 1:12-CV-169 in the United States District Court for the Middle District of North Carolina; (b) file voluntary dismissals with prejudice of all claims in Case Nos. 10 DHR 5999 and 11 DHR 9479 in the North Carolina Office of Administrative Hearings; and (c) send a written notice to the HUD Equal Opportunity Specialist assigned to HUD Case No. 04-12-0522-8 informing HUD that the Federal Action and State Actions have been settled and requesting that their complaint in the Administrative Action be withdrawn. The Plaintiffs acknowledge that there are no other claims or administrative complaints pending against Defendants relative to the claims asserted in the Federal Action, the State Actions, and the Administrative Action.

4. **Mediator Fee.** Half of the mediator's fee will be billed to Defendants and the other half will be waived. Defendants are responsible for paying half of the mediator's fee directly to the mediator.

5. **Mutual Release.**

(a) Except for the actions and obligations required or authorized by this Agreement, each Party releases and discharges the other Parties and the other Parties' managers, directors, agents, employees, representatives, predecessors, successors, attorneys, and heirs (collectively, the "Releasees") from all claims, actions, demands, damages, costs, expenses, and attorneys' fees that have arisen on or before the date of this Agreement and that relate to the claims for federal Emergency Shelter Grant funds asserted in the Federal Action, the State Actions, or the Administrative Action (collectively, the "Released Claims").

(b) The Parties acknowledge that, although Plaintiffs will request that their complaint in the Administrative Action, HUD Case No. 04-12-0522-8, be withdrawn, Plaintiffs do not have the authority or ability to control, dictate, or decide HUD's actions, investigations, and decisions in the Administrative Action.

6. **Covenant Not to Sue.** Except for legal action to enforce the terms of this Agreement, each Party covenants (a) not to prosecute any civil action or other proceeding and (b) not to pursue any claim for damages or other relief against any of the Releasees which relate to or arise out of the Released Claims.

7. **Parties to Bear Own Costs/Attorneys' Fees.** Except as otherwise provided or contemplated by this Agreement, the Parties agree that they will bear their own court costs, attorneys' fees, disbursements, and expenses of any kind incurred in the Federal Action, the State Actions, or the Administrative Action or in negotiating this Agreement. The Parties further agree to execute any other documents reasonably necessary to effectuate fully the terms of this Agreement.

8. **No Admission of Liability.** Nothing in this Agreement constitutes an admission of fault or liability by any of the Parties, but this Agreement is made solely to compromise disputed claims for the purpose of avoiding further litigation.

9. **Waiver.** No failure on the part of the Parties to exercise, no delay by the Parties in exercising, and no course of dealing with respect to any right or remedy of the Parties will operate as a waiver of any provision of this Agreement; nor will any single or partial exercise of any right or remedy by the Parties preclude any other further exercise of any other right or remedy.

10. Modifications. No modification, amendment, or waiver of this Agreement shall be binding unless expressly agreed to in writing and signed by the each of the Parties or their authorized representatives.

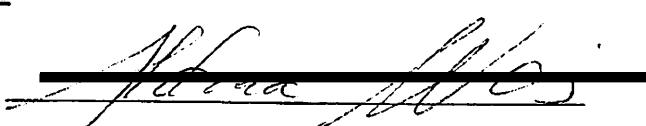
11. Binding Effect. This Agreement shall be binding upon the Parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of, and bind, the Parties for whom they are signing this Agreement.

12. Assistance of Counsel. The Parties have read this Agreement, acknowledge that they have had the advice of counsel in drafting and negotiating this Agreement and they have relied fully and completely on their own judgment and the advice of their attorneys in executing this Agreement. The Parties enter into this Agreement freely and voluntarily without any duress.

13. Counterparts. This Agreement may be executed in original or electronic counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument.

VALID, EFFECTIVE, AND BINDING as of the date of the last signature below.

FOR DEFENDANTS

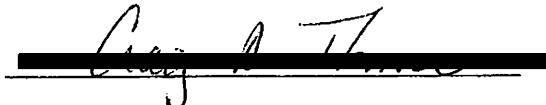
By: 

Title: Secretary, NC Dept. of Health and Human Services

Printed Name: Dr. Aldona Wos

Date: 6/23/14

FOR PLAINTIFF MARY'S HOUSE, INC.

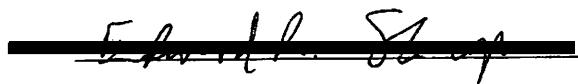
By: 

Title: Executive Director, Mary's House, Inc.

Printed Name: Craig A. Thomas

Date: June 19, 2014

FOR INDIVIDUAL JANE DOE PLAINTIFFS

By: 

Title: Legal Aid of NC, Counsel for Jane Does 1 through 8

Printed Name: Edward R. Sharp

Date: 6/19/2014